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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

NO. 15-4408

HANS W. JACOBSON, APPELLANT,

V.

ROBERT A. McDONALD,  
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before PIETSCH, *Judge*.

**MEMORANDUM DECISION**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

PIETSCH, *Judge*: Hans W. Jacobson appeals through counsel a September 25, 2015, Board of Veterans' Appeals (Board) decision that denied entitlement to VA benefits for cervical spondylosis and degenerative joint disease (a neck disorder) and headaches. This appeal is timely and the Court has jurisdiction to review the Board's decision pursuant to 38 U.S.C. §§ 7252(a) and 7266(a). Single-judge disposition is appropriate as the issue is of "relative simplicity" and "the outcome is not reasonably debatable." *Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons that follow, the Court will affirm the Board's September 25, 2015, decision.

**I. FACTS**

Mr. Jacobson served on active duty in the U.S. Navy from May 1984 to November 1987. He was involved in a car accident during service in 1984. Treatment reports from that accident showed that he had normal alignment of the cervical vertebral bodies. Medical records do not indicate any treatment for, or diagnosis of, an injury to the cervical spine. In June 1985, Mr. Jacobson reported having headaches and blurred vision. In December 1986, he underwent treatment, including x-rays, for lower back, neck, and upper thoracic pain, which he attributed to

heavy lifting. A March 1987 report from the Medical Board indicates that Mr. Jacobson was not fit for shipboard duty. The Medical Board noted that Mr. Jacobson reported being injured when 400 pounds of frozen meat fell on him in June or July 1986 while he was aboard the U.S.S. *Leftwich*. The Medical Board recommended that he be disqualified from further military service as a result of lower back pain that limited his activities. He was thereafter honorably discharged.

In October 1988, a VA regional office (RO) granted entitlement to VA benefits for low back pain caused by muscle spasms, but denied entitlement to VA benefits for spondylosis, which it found to be a developmental abnormality.

In December 2001 and 2002, Mr. Jacobson reported experiencing neck pain. During a March 2003 VA neurology consultation, he reported experiencing headaches for the past six or seven years. At an October 2007 VA neurology consultation, the examiner diagnosed Mr. Jacobson with basilar migraines, noting a family history of migraines.

Mr. Jacobson filed claims for VA benefits for a cervical spine disorder and migraines in July 2008. He underwent a VA examination in September 2008, at which he reported experiencing neck pain, stiffness, and tightness, as well as low back pain and headaches. The examiner determined that Mr. Jacobson's cervical spine condition and migraines were less likely than not caused or aggravated by his service-connected lumbar spine disability. In May 2009, another VA examiner opined that Mr. Jacobson's migraines were less likely as not secondary to or aggravated by the medications prescribed for his service-connected conditions, specifically the pain medications for his back disability.

At an October 2011 VA examination, the examiner noted that Mr. Jacobson reported that he was treated for neck pain in approximately 2002 and that he believed that his low back caused his neck pain. The examiner opined that degenerative disease of the lumbar spine would not cause degenerative disease of the cervical spine. In November 2012, a VA examiner opined that it was less likely than not that Mr. Jacobson's headaches were related to his service-connected low back disability.

In an April 2013 letter from Mr. Jacobson's private chiropractor, the doctor noted that Mr. Jacobson had low back pain and cervical pain with degenerative joint disease in the cervical, thoracic, and lumbar spine. The chiropractor opined that Mr. Jacobson's pain was related to his injury during his military service. At an October 2013 VA examination, the examiner found that,

based on a review of medical references, Mr. Jacobson's cervical spine condition was less likely as not caused or aggravated by his service or his service-connected back disability.

At a May 2014 Board hearing, Mr. Jacobson again reported injuring his back when hundreds of pounds of frozen meat fell on top of him. He stated that his neck injury was also related to that incident. He testified that his private physician informed him that the medication he took for his low back condition caused his headaches.

In December 2014, Mr. Jacobson underwent another VA examination, at which he reported that his current neck pain began 10 to 15 years prior. He also recounted injuring his back when frozen meat fell on him while he was aboard a ship during service. The examiner found that there was nothing to link Mr. Jacobson's cervical spine disability to his service because his neck did not become problematic until 10 to 15 years prior to the examination and many years after service. The examiner discussed the opinion of Mr. Jacobson's chiropractor, but noted that there was nothing supporting that opinion. The examiner stated that cervical spondylosis is a common degenerative condition of the cervical spine and that the role of occupational trauma was controversial. The examiner also noted that lumbar pathology does not cause the cervical spine to degenerate and that, because Mr. Jacobson's complaints of cervical pain in service resolved by stretching, this indicates a muscular type of problem that was self-limiting in nature. The examiner concluded that if Mr. Jacobson had "sustained any acute boney injury to his spine [in] June-July 1986, then the bone scan would have been abnormal due to healing process in that boney area," which was not the case. Record (R.) at 2610.

Regarding headaches, the December 2014 VA examiner noted that Mr. Jacobson's in-service headaches were short-lived and did not develop into a chronic disability. The examiner stated that Mr. Jacobson had a strong family history of migraines, which began before he was taking medications for his low back condition. Thus, the examiner found that Mr. Jacobson's headaches were not related to service or to his service-connected back condition.

In September 2015, the Board issued the decision currently on appeal. In that decision, the Board found that the December 2014 VA examination report was the most probative evidence of record. Based on that report, the Board found that there was no link between Mr. Jacobson's current neck pain and his injury during service or his service-connected back disability. In denying entitlement to VA benefits for headaches, the Board again relied on the

December 2014 VA medical opinion to find that there was not sufficient evidence linking his headaches to his service or service-connected disability.

On appeal, Mr. Jacobson argues that the Board erred by relying on the December 2014 VA examination report, which he contends is inadequate because the examiner erroneously found that he did not sustain an injury during service. He also argues that the December 2014 medical opinion is contrary to other medical evidence relied on by VA to award VA benefits for his back disability. Based on these same arguments, Mr. Jacobson argues that the Board failed to ensure that VA substantially complied with the April 2014 remand order requiring that VA provide an adequate medical examination and opinion. He also argues that his claim for VA benefits for headaches should be remanded as intertwined with his claim for VA benefits for a cervical spine disability.

The Secretary responds that the Board did not err in relying on the December 2014 VA medical opinion. He contends that the examiner did not rely on a false factual premise in providing the opinion or rely on facts contrary to the record. The Secretary also disagrees with Mr. Jacobson's contention that the evidence shows that his degenerative cervical condition is service connected because his low back condition is also service connected. He contends that the Board adequately explained why Mr. Jacobson's cervical disability is not related to his injury during service. On this basis, he argues that neither Mr. Jacobson's claim for VA benefits for a cervical disability nor his claim for VA benefits for headaches should be remanded.

## **II. ANALYSIS**

Although VA need not provide a medical examination in all cases, "once the Secretary undertakes the effort to provide an examination when developing a service-connection claim, he must provide an adequate one." *Barr v. Nicholson*, 21 Vet.App. 303, 311 (2007). A medical examination is considered adequate "where it is based upon consideration of the veteran's prior medical history and examinations and describes the disability, if any, in sufficient detail so that the Board's 'evaluation of the claimed disability will be a fully informed one.'" *Stefl v. Nicholson*, 21 Vet.App. 120, 123 (2007) (*quoting Ardison v. Brown*, 6 Vet.App. 405, 407 (1994)); *Green v. Derwinski*, 1 Vet.App. 121, 124 (1991). The opinion "must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions." *Stefl*, 21 Vet.App. at

124-25; *see also* *Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 301 (2008) (noting that "a medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two"). "Whether a medical opinion is adequate is a finding of fact, which this Court reviews under the 'clearly erroneous' standard." *D'Aries v. Peake*, 22 Vet.App. 97, 104 (2008); *see Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990).

In addition, the Board is required to provide a written statement of the reasons or bases for its findings and conclusions on all material issues of fact and law presented on the record; the statement must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court. 38 U.S.C. § 7104(d)(1); *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Simon v. Derwinski*, 2 Vet.App. 621, 622 (1992); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). To comply with this requirement, the Board must analyze the credibility and probative value of the evidence, account for the evidence that it finds to be persuasive or unpersuasive, and provide the reasons for its rejection of any material evidence favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed. Cir. 1996) (table); *Gabrielson v. Brown*, 7 Vet.App. 36, 39-40 (1994); *Gilbert*, 1 Vet.App. at 57.

Mr. Jacobson argues that the Board erred by relying on the December 2014 VA medical examination because the examiner incorrectly found that his reported in-service injury involving a large load of frozen meat falling on him did not occur. He states that in prior adjudications, VA had already determined that the injury did occur. The December 2014 VA examiner did express some skepticism about whether Mr. Jacobson was injured by frozen meat falling on him during service. However, the examiner did not rely on that accident not occurring to reach her conclusion. Instead, in rendering the opinion, the examiner accepted that the injury occurred, finding that, based on the medical evidence of record, Mr. Jacobson did not suffer an injury to his spine at the time of that injury.

In support, the examiner stated that Mr. Jacobson's December 1986 x-ray, which was conducted after his June or July 1986 injury, was normal. The examiner stated that, if Mr. Jacobson had sustained an acute bony injury to his back when the frozen meat fell on him, the x-ray would have been abnormal. The examiner, therefore, concluded that the only injury

sustained by Mr. Jacobson at the time of the accident was low back pain, which is not a cause for the later development of degenerative disease of the cervical spine. Based on the absence of an injury to the relevant part of his spine, and the number of years that passed between his separation from service and his current neck condition, the examiner determined that his current condition was less likely than not related to service.

To the extent that Mr. Jacobson argues that the examiner was required to adopt previously adjudicated determinations regarding the cause of his cervical spine disability, his argument is without merit. Although he is service connected for a back disability as a result of frozen meat falling on him during service, that finding does not require that his separate cervical spine condition be found to be related to the same incident. Here, the Board thoroughly explained why service connection was not warranted for his cervical spine disability. Because the December 2014 VA examiner did not rely on an inaccurate factual premise and explained her finding that Mr. Jacobson's cervical spine condition was not related to any injury during service or other service-connected disability, the examination is adequate and the Board did not err in relying on it. *See Stefl*, 21 Vet.App. at 123. Further, because the Court finds the December 2014 examination adequate, the Court must reject Mr. Jacobson's related argument that the Board failed to ensure substantial compliance with its prior remand order to provide an adequate examination. *See Stegall v. West*, 11 Vet.App. 268, 271 (1998).

Mr. Jacobson also argues that his claim for VA benefits for headaches should be remanded as "intertwined" with his claim for VA benefits for a cervical spine disability. However, because the Court finds that remand is not required regarding his claim for benefits for a cervical spine disability, his argument regarding headaches is moot.

### **III. CONCLUSION**

Upon consideration of the foregoing analysis, the record of proceedings before the Court, and the parties' pleadings, the September 25, 2015, Board decision is AFFIRMED.

DATED: November 30, 2016

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